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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 07/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/835,933

Applicant(s)

HEFNER, CORBETT T. *CS*

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 32-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21, 32-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1,4-7,11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huertas (ES Publication 1,033,033) in view of either Shigeru (JP Publication 200-142712) or Christensen (US 3,506,185) or Bell (US 5,882,120).

Huertas teaches the claimed bag having a first side wall 2 of plastic mesh material and a second side wall 1 of plastic film material, the first sidewall having a reinforcing strip 4 attached to its upper end. Huertas does not disclose whether the reinforcing strip is attached at its side edges to the second sidewall.

Shigeru or Christensen or Bell each teach it is known to provide a bag with its side edges sealed together along the entire length of the bag.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of sealing the bag side edges together all the way to the top of the bag as taught by any one of Shigeru or Christensen or Bell. Doing so would provide more storage space within the bag for its contents.

Regarding claims 5-7, the distances recited in the claims would have been an obvious matter of mechanical expedience.

Regarding claim 11, the claimed overlap would have been an obvious matter of mechanical expedience.

Regarding claims 13 and 14, the distances recited in the claims would have been an obvious matter of mechanical expedience.

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3. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Fox et al. (US 6,024,489).

Huertas teaches the claimed bag except is silent regarding the mesh being formed of a synthetic resin **fiber** mesh material, only that it is plastic (a synthetic resin material).

Fox teaches it is known to use a synthetic resin fiber mesh material, such as a cross-laminated fabric material, to make a first side of a bag.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the cross-laminated fabric mesh of Fox for the plastic mesh of Huertas, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

4. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Fox.

Huertas teaches holes **4**, which can be deemed "wicket holes" because the term "wicket" imparts no structure to the claimed holes. See the description describing the holes to be on both sheets.

Alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute wicket holes as taught by Fox for the hand holes of Huertas. Doing so allows a stack of Huerta's bags to be attached to a wicket for the purpose of facilitating filling of the bags.

Regarding claims 9 and 10, it would have been obvious to one of ordinary skill in the art at the time the invention was made to additionally provide the wicket holes with slits extending from them as taught by Fox at **40**. Doing so facilitates removing a bag from a wicket.

5. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 9 above, and further in view of Cammack (US 5,741,076).

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Huertas as modified teaches the claimed bag except for the wicket holes formed in the second side wall above the upper edge of the reinforcing strip.

Cammack teaches it is known to provide wicket holes **78** in the second side wall above the upper edge of the reinforcing strip **30**.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of the wicket holes formed in the second side wall above the upper edge of the reinforcing strip. Doing so makes filling of the bags easier due to easier separation of the bag walls.

6. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Cammack.

Huertas as modified teaches the claimed bag except for the second side wall upper edge protruding above the upper edge of the reinforcing strip.

Cammack teaches it is known to provide a second side wall upper edge **31** protruding above the upper edge of the reinforcing strip **30**.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a second side wall upper edge protruding above the upper edge of the reinforcing strip. Doing so makes filling of the bags easier due to easier separation of the bag walls.

7. Claims 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huertas in view of Fox and either of Shigeru or Christensen or Bell.

Huertas teaches the claimed bag having a first side wall **2** of plastic (i.e., synthetic resin) mesh material and a second side wall **1** of plastic film material, the first sidewall having a reinforcing strip **4** attached to its upper end.

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Huertas does not disclose whether the reinforcing strip is attached at its side edges to the second sidewall.

Shigeru or Christensen or Bell each teach it is known to provide a bag with its side edges sealed together along the entire length of the bag.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of sealing the bag side edges together all the way to the top of the bag as taught by any one of Shigeru or Christensen or Bell. Doing so would provide more storage space within the bag for its contents.

Huertas teaches the claimed bag except is silent regarding the mesh being formed of a synthetic resin **fiber** mesh material, only that it is plastic (a synthetic resin material).

Fox teaches it is known to use a synthetic resin fiber mesh material, such as a cross-laminated fabric material, to make a first side of a bag.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the cross-laminated fabric mesh of Fox for the plastic mesh of Huertas, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Huertas teaches holes **4**, which can be deemed "wicket holes" because the term "wicket" imparts no structure to the claimed holes. See the description describing the holes to be on both sheets.

Alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute wicket holes as taught by Fox for the hand holes of Huertas. Doing so allows a stack of Huerta's bags to be attached to a wicket for the purpose of facilitating filling of the bags.

The claimed dimensions would have been obvious matters of mechanical expedience.

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8. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 17 above, and further in view of Cammack.

Huertas as modified teaches the claimed bag except for the second side wall upper edge protruding above the upper edge of the reinforcing strip.

Cammack teaches it is known to provide a second side wall upper edge 31 protruding above the upper edge of the reinforcing strip 30.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a second side wall upper edge protruding above the upper edge of the reinforcing strip. Doing so makes filling of the bags easier due to easier separation of the bag walls.

9. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 15 above, and further in view of Cammack.

Huertas as modified teaches the claimed bag except for the second side wall upper edge protruding above the upper edge of the reinforcing strip.

Cammack teaches it is known to provide a second side wall upper edge 31 protruding above the upper edge of the reinforcing strip 30.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a second side wall upper edge protruding above the upper edge of the reinforcing strip. Doing so makes filling of the bags easier due to easier separation of the bag walls.

10. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huertas in view of Cammack.

Huertas teaches the claimed bag having a first side wall 2 of plastic (i.e., a synthetic resin) mesh material and a second side wall 1 of plastic (i.e., a synthetic resin) film material, the

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first sidewall having a reinforcing strip 4 attached to its upper end. Huertas does not teach the second side wall upper edge protruding above the upper edge of the reinforcing strip.

Cammack teaches it is known to provide a second side wall upper edge 31 protruding above the upper edge of the reinforcing strip 30.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a second side wall upper edge protruding above the upper edge of the reinforcing strip. Doing so makes filling of the bags easier due to easier separation of the bag walls.

11. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 20 above, and further in view of Shigeru or Christensen or Bell.

Huertas as modified teaches the claimed bag except not disclose whether the reinforcing strip is attached at its side edges to the second sidewall.

Shigeru or Christensen or Bell each teach it is known to provide a bag with its side edges sealed together along the entire length of the bag.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of sealing the bag side edges together all the way to the top of the bag as taught by any one of Shigeru or Christensen or Bell. Doing so would provide more storage space within the bag for its contents.

Response to Arguments

12. Applicant's arguments filed May 9, 2003 have been fully considered but they are not persuasive.

Applicant has obviously misconstrued the rejection set forth in the previous Office action. Fox was applied as a teaching reference for using synthetic resin fiber material wherein Huertas merely sets forth plastic, a known synthetic resin. Fox was not applied as teaching seaming the

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reinforcing strip to both bag walls. The patents and patent publications to Shigeru or Christensen or Bell were applied as teaching seaming the bag along the entire edge.

Since plastic is a known synthetic resin material, it is unnecessary to apply another teaching reference for this material. To that end, the patent to Fox has not been reapplied in the rejections where only a synthetic resin material is set forth in the claims, thus reducing the issues.

13. Applicant's arguments with respect to claims 20 and 21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302 or (703) 872-9303 for after final amendments. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to

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a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet.

Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

16. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-____ on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____


17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH
July 24, 2003


Robin A. Hylton
Primary Examiner
GAU 3727